

No. 10361.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HILLCONE STEAMSHIP COMPANY, a corporation, SANTA
CRUZ OIL COMPANY, a corporation, and ASSOCIATED
INDEMNITY CORPORATION, a corporation,

Appellants,

vs.

ALBERT V. STEFFEN,

Appellee.

APPELLANTS' SUPPLEMENTAL BRIEF.

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At the time of the oral argument the Court directed that citations be furnished in connection with the jurisdictional question as to the right of claimant, Steffen, to proceed in the form of action which he had instituted in the District Court. Section 921 of the Longshoremen's and Harbor Workers Act provides an exclusive method whereby the proceedings of the commissioner may be reviewed. Said section reads as follows:

“Review of Compensation Orders. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this chapter, and, unless proceedings

for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the district court of the United States for the District of Columbia if the injury occurred in this District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which

the injury occurred (or to the district court of the United States for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this chapter. Mar. 4, 1927, c. 509, §21, 44 Stat. 1436, as amended June 25, 1936, c. 804, 49 Stat. 1921.”

A special method is therefore set up by Congress in the act itself for the review of orders such as the one in the case at bar. It has been held by this court that the proceedings contemplated by the act are on the admiralty side of the court. See *Kobilkin v. Pillsbury*, C. C. A., Cal., 1939, 103 F. (2d) 667, certiorari granted, 1940, 60 S. Ct. 97, 308 U. S. 530, 84 L. Ed. 447, affirmed, 1940, 60 S. Ct. 465, 309 U. S. 619, 84 L. Ed. 983, rehearing denied, 1940, 60 S. Ct. 584, 309, U. S. 695, 84 L. Ed. 1035. See also *Twin Harbor Stevedoring & Tug Company v. Marshall*, 103 F. (2d) 513.

The two cases just cited were both decided by the United States Circuit Court of Appeals for the Ninth Circuit.

In the case at bar the action in the District Court after the hearing by the commissioner was commenced on the

admiralty side of the court as it should have been. Our contention is that the procedure followed was not that prescribed by the act, namely, the filing of a petition to obtain a mandatory injunction compelling the commissioner to proceed with the hearing as is set forth in paragraph (b) of said section 921. Petitioner does not ask for a mandatory injunction for that purpose unless it might be held that the general allegations of the prayer be so interpreted. As we view the so-called libel and complaint of Steffen, it constitutes a petition to the District Court to find the facts and weigh the testimony, and is not a proceeding asking for a mandatory injunction as required by the act.

Respectfully submitted,

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